

## INFORMATION PAPER

SUBJECT: UCMJ Authority Over Reserve and National Guard Soldiers Conducting ODT in Theater

1. Purpose. To provide information on UCMJ authority over Army Reserve and National Guard soldiers while they are performing Overseas Deployment Training in the USAREUR AOR.

2. Bottom Line. The decision to return a soldier facing UCMJ action to home station or to extend that soldier on active duty for processing the UCMJ action must be made on a case-by-case basis. The appropriate OCONUS commander, in coordination with the CONUS commander and their respective supporting Trial Counsels, must decide the appropriate course of action in each case.

3. Discussion.

a. Under the provisions of Article 2(a)(3), UCMJ, Army Reserve and National Guard soldiers are subject to the UCMJ while on ODT under Title 10, United States Code, and are subject to recall to active duty for offenses committed during ODT.

b. Federally funded National Guard training duty, commonly referred to as "Title 32 duty," is ordered by the state governor and paid for with federal funds. This form of duty is used for weekend drills, annual training and most schools and assignments within the United States. Most National Guard duty falls into this category. Conversely, "Title 10 duty" is duty ordered by the President or the Secretary of the Army under the authority of federal law and paid for with federal funds. This form of duty is used for basic (initial) military training, overseas training missions and occasions when the Guard is called or ordered to active duty (mobilized) by the US Government. National Guard members are not subject to the UCMJ unless they are performing Title 10 duty. Most states, however, have a "state UCMJ" which may apply to Guard members while in Title 32 status. These codes generally follow the federal UCMJ for traditional military offenses, but rely on state criminal statutes for other offenses.

c. Jurisdiction over the soldier attaches when action with a view to court-martial is taken while that member is subject to the UCMJ. Once attached, jurisdiction continues through trial, sentence and punishment. The expiration of the member's term of service or other activation period does not nullify jurisdiction. Thus, if jurisdiction first attaches before the termination date of a reservist's orders, the member may be held for trial beyond the effective termination date.

d. The soldier's commander at the OCONUS duty station may impose Article 15 punishment if the soldier is attached to that unit for UCMJ purposes, or if the commander exercises the usual responsibilities of command over the soldier. Under the provisions of AER 27-10, paragraph 12b, Army Reserve and National Guard soldiers are attached for the administration of military justice to the command exercising General Court-Martial jurisdiction in the specific geographic area in which the soldiers are stationed or performing their ODT duty. This attachment is automatic and effective even in the absence of specific language in the individual soldier's orders.

APPROVED: COL Neveu    DATE: 16 March 2004